IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 31 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI KASHIBHAI PATEL

Versus

COMMISSIONER OF GIFT TAX

Appearance:
1. GIFT TAX REFERENCE No. 31 of 1986
MR MEHUL K.PATEL for Applicant-Assessee.
MR BB NAYAK FOR MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 03/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the assessee and the revenue, the following questions have been referred to this Court for its opinion under the provisions of section 26(1) of the Gift Act,1958 by the Income-tax Appellate Tribunal, Ahmedabad Bench 'A'.

At the instance of the assessee :

"1 Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in following the method involving the principle of "Break-up Value" instead of the method involving the principle of "yield value" in determining the value of the shares of Gaskets and Radiators Pvt.Ltd. u/s.6 of the Gift-tax Act ?

2 Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of Rule 10(2) of the Gift-tax Rules,1958, were applicable for the purpose of valuing the shares of Gaskets and Radiators Pvt.Ltd. and that therefore the said shares should be valued by adopting the break-up value method ?

3 Whether, on the facts and in the circumstances of the case, the Tribunal was right in rejecting the submission of the assessee that the market value of the shares of Gasket and Radiators Pvt.Ltd. which was a running concern should have been worked out at Rs.234/- by adopting the profit earning method ?

4 Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there was no justification to depress the value of the shares of Gaskets and Radiators Pvt.Ltd. in view of the restrictive provisions on the transfer of shares ?

At the instance of the Revenue :

Whether, on the facts and in the circumstances of the case and in law the Tribunal was right in holding that there was no justification to add goodwill to

the assets of the Company while working out the shares gifted ?"

Learned Advocate Shri Mehul K.Patel has appeared for the assessee whereas learned Advocate Shri B.B.Nayak has appeared for the Revenue.

At the time of hearing of this Reference, it has been submitted by the learned Advocates that while deciding the case of the assessee, the Appellate Tribunal had relied upon its order passed in the case of Shri Chimanbhai Patel, brother of the assessee. On identical issues, at the instance of the brother of the assessee Shri Chimanbhai Patel, Reference Application was filed in this Court and it was finally decided by this Court. Judgement delivered in the said case has also been reported. Citation of the said case is - Chimanbhai Kashibhai Patel v/s. Commissioner of Gift Tax, 203 I.T.R.57.

In view of the fact that the issues involved in the present Reference as well as in the Reference which was made at the instance of the assessee's brother and which has been reported in 203 I.T.R.57, are the same, following the said judgment, we answer the first three questions which have been referred to us at the instance of the assessee, in the negative i.e. in favour of the assessee and against the revenue.

In view of the decision rendered in the first three questions, question No.4 referred to this Court at the instance of the assessee and the question which has been referred to this Court at the instance of the revenue need not be answered.

In the circumstances, the Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt